IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.3259 OF 2005.

IN

FIRST APPEAL NO.831 OF 1989.

Shaukat Ali Isimdar
since deceased by his heirs
1A Mariyambee Shaukat Ali & ors.: Petitioners.
versus
Nargesh Dhunjishaw Jassumani
& ors. : Respondents.

Mr.A.R.Shaikh for the petitioners.
Mr.M.P.Rao with K.P.Shreejity i/by M/s. S. Lal for Respondent Nos. 1 to 4.
Mr.V.Z.Kankaria for Respondent Nos.5A to 5D.

WITH

CIVIL APPLICATION NO.3784 OF 2005.

IN

FIRST APPEAL NO.831 OF 1989.

Vahazul Haq Esmidar Khan : Applicant

versus

Mariyambee Shaukat Ali & ors. : Respondents.

Mr.R.M.Pandey i/by Mr.R.P.Singh for the applicant.

Mr.A.R.Shaikh for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 05th September 2005.

ORAL ORDER

1. Civil Application No.3259 of 2005 is filed by the legal heirs and representatives of original defendant No.1 who died in 1995. He was during his life time appointed as an agent of the Court Receiver. After his death his heirs have now filed this application praying that since their father was the agent of the Court Receiver, they should be appointed as the agent after death of their father.

. Whereas the Civil Application No.3784 of 2005 is filed by the applicant who is not a party to the original suit from which all these appeals have arisen and who claims that he was the partner in the business along with original defendant No.1. In his application the applicant has annexed copy of the registration certificate of 1971 where the names of two persons are shown as partners and the name of the present applicant Vahazul Haq Khan is at Sr.No.1. He also relies upon another document dated 9.12.1986 - the application to the provisional Tax Officer wherein he had made assertion about existence of the partnership firm. He also contended that when the original defendant No.1 died the present applicant being the second partner or remaining partner of the said firm should be appointed as agent.

. This is, therefore, a case where the legal heirs and representatives of original defendant No.1 at one side and a person who alleges to be a partners with original defendant No.1 are claiming that they should be appointed as agent of the Court Receiver.

2. So far as Application of the applicant Vahazul Haq Isimdar Khan is concerned, now it is an admitted fact that this applicant has filed a suit in 2004 for declaration of his status. He is asserting his right in respect of the property after 30 years of appointment of receiver and 16 years after passing decree in 1989 between original plaintiff and defendant No.1.

. Whereas another Application No.3259 of 2005 is concerned, the legal heirs of original defendant No.1 have applied for being appointed as agent of the Court Receiver in place of their father.

3. Counsel for the original plaintiff contended that from the death of original defendant No.1 till today, this present applicants inducted 16 more persons for which the plaintiff has taken out contempt proceedings and, therefore, till that dispute is resolved or contempt matter is terminated either way this application should not be considered or allowed.

4. As against this the counsel for the legal heirs of original defendant No.1 contended that

the suit property is more than 12700 sq.ft. whereas the original defendant No.1 was concerned that area was admeasuring 42 x 90 sq.ft. and regarding this area the original defendant No.1 was in possession and this fact has been recognized by the Court Receiver and today only in respect of the said area there is absolutely no encroachment and it is with the legal heirs of original defendant No.1. Upon this statement the Application No.3259 of 2005 is allowed. They will give similar undertaking as given by original defendant No.1 to the Court Receiver and the Court Receiver may fix the royalty afresh considering the facts and present circumstances.

5. As between two applications, Application No.3259 of 2005 is required to be accepted until and unless Vahazul Haq Ismidar Khan establishes his right in the Civil Court. His prayer cannot be considered. The Application No.3784 of 2005 is, therefore, rejection. Application No.3259 of 2005 is allowed.

[D.G.DESHPANDE,J]